Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals With Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") hereby submits these Reply Comments in response to the initial comments filed by other parties in the above-referenced proceeding. In its initial comments,[1] APCC showed that payphone service is a unique and vital form of universal service; that Congress has mandated widespread deployment of payphones; that payphone deployment is shrinking; that the Commission can and should exempt payphone service providers ("PSPs") from making payments to

[1] Comments of American Public Communications Council, CC Docket No. 96-45 (April 22, 2002) ("APCC Comments").

universal service support mechanisms; and that if PSPs are required to make any payments, the level of payments should reflect the minimal interstate revenues that PSPs collect from coin calls. The comments filed by other parties in no way undermine APCC's position that PSPs should be exempt from, or make minimal payments to, universal service support mechanisms, and in many instances the other parties' comments support the arguments on which APCC's position is based.

I. THE PUBLIC INTEREST REQUIRES THAT PSPS BE EXEMPT FROM, NOT PAYORS TO, UNIVERSAL SERVICE SUPPORT MECHANISMS

In the *Further Notice*, the Commission sought comment on whether a connection-based assessment methodology satisfies the requirement in section 254(d) of the Act that "[e]very *telecommunications carrier* that provides interstate telecommunications shall contribute, on an equitable and nondiscriminatory basis to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service" (emphasis added).[2] As APCC explained in its initial comments, PSPs are not "telecommunications carriers."[3] Section 254(d) also states that "any other provider of interstate telecommunications," which would include PSPs, may be required to make universal service payments but only "if the public interest so requires."[4] The Commission previously included PSPs as universal service contributors by relying on a faulty interpretation of the status of local exchange carrier payphones.[5]

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[2] *Further Notice* ¶ 65.

[3] *See* APCC Comments at 16 (PSPs, as "aggregators" under Section 226 of the Act are specifically excluded from the definition of "telecommunications carrier").

[4] 47 U.S.C. § 254(d).

[5] *See* APCC Comments at 16-18.

In response to the Commission's query whether the proposed connection-based assessment system satisfies section 254(d), the Coalition for Sustainable Universal Service – the principal proponent of the proposed system – observed that "Section 254(d) of the Act does not preclude the Commission from adopting an equitable and nondiscriminatory contribution formula that applies to all telecommunications carriers even if the formula would result in some carriers making no contribution."[6] In APCC's view, if certain providers who are subject to the mandatory "every telecommunications carrier . . . shall contribute" language of section 254(d) would not be required to make universal service payments, then surely there are providers who are not telecommunications carriers that also should not be required to make universal service payments. For the reasons spelled out in APCC's comments, PSPs are such providers.[7]

A. For the Same Reasons That The Commission And Commenting Parties Would Exempt Providers Of Lifeline Service From Making Universal Service Payments, So Too Should PSPs Be Exempt From Making Universal Service Payments

One of the reasons APCC pointed to in its initial comments as a basis for exempting PSPs from universal service payments is the similarity in the roles that payphone service and Lifeline service play in the lives of low income Americans.[8] As APCC explained, "[f]or those who have neither a home phone nor a wireless phone, payphones provide a

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6 Comments of the Coalition for Sustainable Universal Service, CC Docket No. 96-45 (April 22, 2002) ("Coalition Comments") at 84.

7 APCC Comments at 6-18.

8 *Id.* at 8-10. The importance of payphones as a lifeline service was underscored by the Comments of the National Congress of American Indians Review of Lifeline and Link-Up Service for All Income Consumers, CC Docket No. 96-45 (dated December 20, 2001 but filed in CC Docket No. 96-45 on April 23, 2002, apparently in response to the *Further Notice*) at 1, which recounts the story of a car accident on an Indian reservation where there were no phones. The accident resulted in a death that might have been averted had a phone been available to call for emergency assistance.

crucial 'lifeline' service."[9] The Commission has proposed exempting providers of Lifeline service from making universal service payments, in part because Lifeline service subscribers account for only a small percentage of total connections.[10] The parties commenting on the issue appear to have endorsed that approach.[11] Because of the similar roles played by payphone service and Lifeline service, and because the approximately two million payphone connections are only a fraction of the approximately six million Lifeline service connections, the Commission should also exempt PSPs from making universal service payments.

B. The Commenters' Focus On "Collect And Remit" And "Line Item" Billing For End Users Underscores Why PSPs, Who Have No Rational Method For Recovering Universal Service Payments From End Users, Should Be Exempt From Making Payments

A number of parties in their initial comments[12] address the "line item" and "collect and remit" payment recovery proposals outlined in the *Further Notice*.[13] Discussions of these proposals have no application to PSPs. PSPs have no subscribers they can bill and so the concept of a "line item" surcharge to recover universal service payments is meaningless in the context of payphone service.

Similarly, there is no equitable method by which PSPs could implement "collect and remit" arrangements on coin calls under a connection-based system. Apart from the

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9 APCC Comments at 8.

10 *Further Notice* ¶ 40.

11 *See, e.g.*, Coalition Comments at 70. Even SBC, which argues that the Commission should "assess universal service contributions on all providers of interstate telecommunications, regardless of the type of service provided and the technology platform used by the service provider," would exempt Lifeline services from contribution obligations. Comments of SBC Communications, Inc., CC Docket No. 96-45 (April 22, 2002) ("SBC Comments") at 5.

12 *See, e.g.*, Comments of Sprint Corporation, CC Docket No. 96-45 (April 22, 2002) at 15-17; Comments of WorldCom, Inc., CC Docket No. 96-45 (April 22, 2002) at 7-8; Comments of the Ad Hoc Telecommunications Users Committee, CC Docket No. 96-45 (April 22, 2002) at 19-22; SBC Comments at 2, 12-13.

13 *Further Notice* ¶¶ 95-108.

paucity of interstate coin calls, the number and duration of the few interstate coin calls made at any particular payphone will vary from month to month. The result would be that PSPs generally would either over collect or under collect any prescribed charge and only through random chance collect the exact prescribed connection-based charge. As APCC stated in its initial comments, PSPs do not fit the universal service payment and collection model, and should be exempt from making universal service payments.[14]

C. Other Parties Share APCC's View That A Connection Based Assessment Methodology When Applied To Services, Such As Payphone Services, That Are Predominantly Intrastate, Runs Afoul Of The Fifth Circuit's *Texas PUC* Decision

A number of parties, in addition to APCC, expressed concern that a connection based methodology will result in a de facto assessment of intrastate revenues for universal service support mechanisms in contravention of the Fifth Circuit's decision in *Texas PUC*.[15] PSPs' coin call traffic is overwhelmingly for local calls and there is minimal interstate coin call traffic. As APCC stated in its initial comments, if PSPs were required to make universal service payments of any significance, PSPs would be in the position of having to recover such payments through price increases for local coin calls, a result at odds with the Fifth Circuit's decision.[16]

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[14] Initial Comments of APCC at 13-16. As APCC explained, PSPs have only one source of end user revenue for interstate calling: interstate coin calls. Furthermore, only a small percentage of coin calls from payphones are interstate calls. Therefore, a major increase in the charges for such calls – even on the unlikely assumption that such increase in charges would not decrease call volume and duration – would yield only minimal revenue to cover PSPs' increased universal service payments under the proposed connection based system. Regarding recovery of universal service payments from dial-around compensation, the Commission-prescribed per call charge that applies to interstate dial-around calls does not include an element that covers the cost of payments to universal service.

[15] *Texas Office of Public Utility Counsel v. FCC*, 183 F3d 393, 448 (5th Cir. 1999) ("*Texas PUC*").

[16] APCC Comments at 14.

Other parties pointed out the serious issues raised by a connection-based system that *potentially* relies on intrastate revenues *or* usage. The National Telecommunications Cooperative Association ("NTCA") affirmed the difficulty of equitably assessing universal service charges on interstate rather than intrastate usage under a connection based assessment system. As NTCA observed:

> Because the FNPRM's connection-based proposal applies universally to customers connected to the local network it fails to reflect differences between the customer's interstate and intrastate usage and differences between providers of interstate and intrastate services…inevitably impos[ing] a charge on local service and captur[ing] intrastate services and revenues as part of a carrier's contribution to the interstate USF mechanism."[17]

Similarly, the Allied Personal Communications Industry Association of California found that the "proposed connection-based assessment cannot be characterized as competitively neutral … since the unit of measurement, *i.e.*, the 'connection,' bears no relationship to interstate revenue …."[18] The California PUC echoed this refrain when it observed that while a connection-based approach is "not directly tied to intrastate revenues, it is based indirectly on intrastate usage, since it would assess all connections to the network, including those that have no interstate usage."[19]

These concerns apply a *fortiori* to payphones. As mentioned above, it is not feasible to recover universal service contributions from interstate coin calls. Under a connection-based system, a payphone connection could be assessed for universal service

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[17] NTCA Comments, CC Docket No. 96-45 (April 22, 2002) at 4.

[18] Comments of the Allied Personal Communications Industry Association of California in Response to Further Notice of Proposed Rulemaking, CC Docket No. 96-45 (April 22, 2002) at 5.

[19] Comments of the California Public Utilities Commission and the People of the State of California, CC Docket No. 96-45 (April 22, 2002) ("California Comments") at 8.

even though no interstate coin calls were ever actually made from that particular phone. Of greater importance, because of the lacuna of interstate coin calling, a connection based methodology, if applied to PSPs, would require PSPs, as a practical matter, to make universal service payments on the basis of intrastate revenue. Such an assessment methodology would be inappropriate in light of the *Texas PUC* decision. This is yet another reason why the Commission should exempt PSPs from having to make universal service payments.

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For the reasons stated in APCC's initial comments, and in light of the above-described comments filed by other parties, the Commission can[20] and should find that the public interest requires that PSPs be exempt from making payments to universal service support mechanisms.[21]

II. IF THE COMMISSION REQUIRES ASSESSMENTS FOR PAYPHONE CONNECTIONS, THE RATE SHOULD NOT BE HIGHER THAN THE RATE THAT APPLIES TO PAGING CONNECTIONS

In its initial comments, APCC explained that if the Commission decided, despite strong public policy considerations to the contrary, not to exempt PSPs from universal service payments, payphone connections should be placed in a separate category reflecting the unique characteristics of payphone service. APCC explained that the appropriate rate for the separate category was zero, and if assessed at a rate above zero, payphone

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[20] For a legal analysis of why the Commission can properly exempt PSPs from making payments to universal service, see APCC Comments at 16-18.

[21] Most of the parties addressing the conflict between the Fifth Circuit's *Texas PUC* decision and a connection-based assessment system urge the Commission to retain the current revenue-based system with modifications. *See, e.g.*, California Comments at 2, 4, 8; NTCA Comments at 2, 4-10. APCC believes policy considerations require that PSPs be exempt from universal service payments under either a connection-based or revenue-based approach and therefore does not necessarily argue here for or against maintaining the current revenue-based system.

connections should be assessed in a manner similar to that proposed for paging connections, priced at a rate of $.25 per connection.[22]

APCC explained why payphone connections were functionally most similar to paging connections and distinct from other proposed categories of connections, particularly multiline business connections.[23] APCC also demonstrated that the illustrative rates for Tier-1 multiline business connections were grossly inequitable when applied to payphone service.[24] Under no circumstances should the Commission classify payphone connections as multiline business connections; to do so would almost certainly accelerate the rate of payphone removal.

The connection-based rate scheme proposed by SBC and BellSouth in their Joint Proposal does not specifically address payphone connections. For the same reasons that payphone connections should be assessed at the rate for paging connections under the Commission's proposal, so too should payphone connections be assessed at the rate for paging connections were the Commission to adopt the Joint Proposal.

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22 The paging industry has protested this rate as excessive. *See, e.g.,* Comments of Concerned Paging Carriers, CC Docket No. 96-45 (April 22, 2002) ("Concerned Paging Comments") at 9.

23 APCC Comments at 21-25. As APCC explained, a payphone connection is more similar to a paging connection than the other connections in the Commission's proposal. Like one-way pagers, payphones often cannot receive incoming calls, and just as one paging frequency can serve numerous subscribers receiving messages, one payphone can serve many different people making outgoing calls. Most importantly, "as with pagers, the assessment adopted for payphones [if any] should reflect PSPs' comparatively small interstate revenues." *Id.* at 22.

24 APCC Comments at 24. The Association of Communications Enterprises notes that the rate for a Tier-1 voice grade connection is almost 1700 percent higher than the rate for comparable connections under Tier-3 using a DS-3 connection with 672 voice grade equivalent lines. The Association of Communications Enterprises, CC Docket No. 96-45 (April 23, 2002) at 11. As APCC explained in its comments, payphone lines are not provisioned in a manner that allows PSPs to be able to take advantage of multiline traffic aggregation efficiencies.

Finally, APCC notes that most commentors agree that the de minimis exception should be retained.[25]

III. CONCLUSION

For the reasons set forth in APCC's initial comments and in these reply comments, the Commission should exempt PSPs from making payments to universal service, or, at most, assess PSPs at the rates applicable to paging connections.

Respectfully submitted,

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25 *See e.g.*, Concerned Paging Comments at 14-16; Coalition Comments at 88-91; SBC Comments at 12.